

A black and white photograph of a man with dark hair and glasses, wearing a denim shirt. He is covering his face with his hands, suggesting distress or frustration. The background is blurred, showing an indoor setting with a lamp.

Anatomy of a Short Seller Attack – History, Symptoms and Solutions

**By Alyssa Barry, W.Sam Chandoha,
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Introduction

The term “short selling” has become infamous across the business world – and for good reason. From Black Wednesday to the Great Recession, the phenomenon has shaped global markets for decades. The impact of short selling, particularly concerted short attacks, can be just as dramatic for individual companies. Ravaging corporate reputations, and sometimes their long-term financial health, the practice has impacted companies as varied as Enron and Wirecard. More recently, short sellers had another bellwether moment when in May 2023 Hindenburg Research issued a short report on Icahn Enterprises costing one of the most famed activist investors/corporate raiders Carl Icahn a significant amount of his personal wealth.

Yet, if short selling remains an everyday practice – according to Nasdaq, the typical stock sees around 40–50% of its daily trading volume sold short – executives too often dismiss the possibility of short attacks as they are less discussed than ESG issues or traditional long-only shareholder activism. But where investor concerns around environmental, governance and social issues can be managed over the long-term, short attacks usually appear quickly and, without an effective response strategy, have the potential to overwhelm leaders and their firms.

But for victims of a short attack, the situation is not hopeless. Though sudden, short attacks don’t usually happen without warning signs. Rather, short sellers look to exploit vulnerable stocks. Red flags can be years in the making, with regulatory challenges and frequent proxy battles just two examples among many. Knowing the warning signs can give forward-thinking executives a chance to deal with problems in advance.

Foresight can prove equally useful if the worst does happen, with boards primed with an effective response strategy that reassures shareholders that their fundamentals remain strong, whatever short attackers might claim. Such a strategy runs in parallel to the broader business advantages that can be achieved by focusing on good corporate governance and investor relations, and is bolstered by partnering with independent advisory firms and law firms with deep experience in the field.



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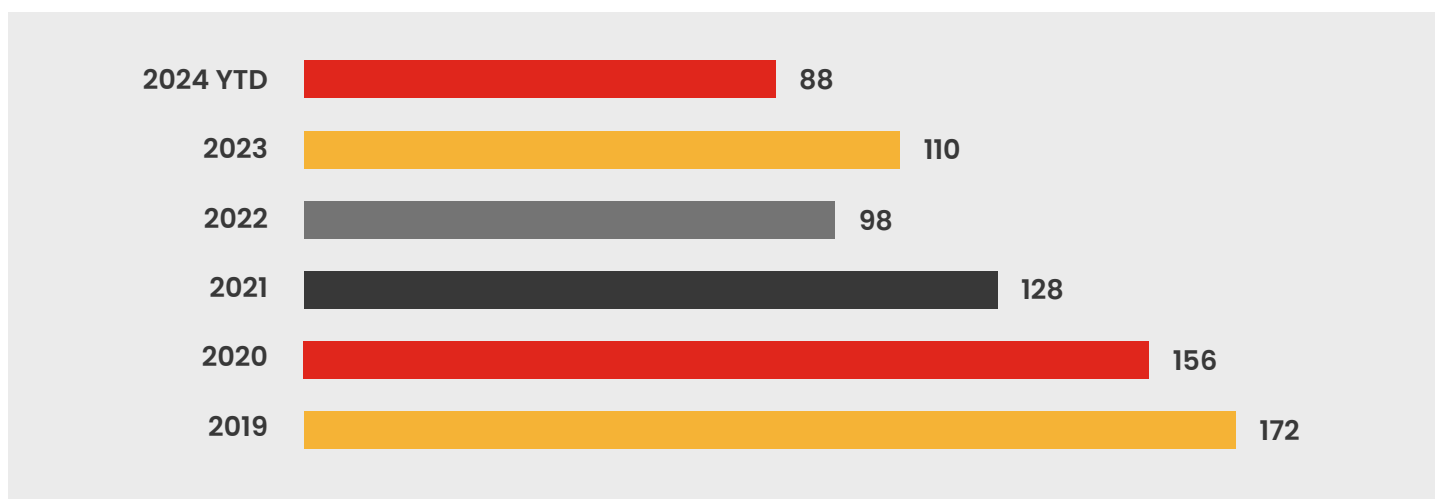
Sean Donahue
Paul Hastings

What Are Short Attacks – And Why Are They So Dangerous?

A short attack occurs when a short seller publishes a short report on a company. This report typically contains several negative allegations regarding the company and is intended to drive the stock price down. The short seller will typically have borrowed shares and sold them in advance of issuing the short report. After the short report is issued and the stock price has declined the short seller will repurchase the shares at a lower price and repay the loan.

Short attacks remain a significant threat to corporations around the world. The diversity of short attack victims provides insight into the scale of the problem, with sectors as varied as F&B ([Luckin Coffee](#)), media ([Eros Entertainment](#)) and gambling ([DraftKings](#)) all suffering short attacks over recent years.

The following data from Diligent Market Intelligence shows the prevalence of short attacks over the past five years and 2024 YTD:



While not all short campaigns are successful, the majority of them result in negative one-day and one-week returns for companies. For example, in 2023, approximately two-thirds of short attacks resulted in a negative one-week return for companies, with one report resulting in a greater than 90% negative one-week return for the company.

Despite the diversity of the victims, the short attackers' playbook remains largely similar. Short seller activists act like tabloid investigative reporters eager to unearth proof that a target company is overvalued and amplifying the story as loud as they can. This is usually done by offering evidence of corporate mismanagement or malfeasance, or highlighting accounting issues or weak executives, just two examples among many. That, in turn, allows attackers to borrow a security whose price they suspect will fall and sell the stock on the open market before unleashing their plan and buying the now-cheaper shares back for profit and closing out their short position.

It goes without saying that the consequences of this practice for companies is extremely serious and can be very costly. Short attacks are often traumatic for CEOs, CFOs, and other executives, as well as for the board of directors, driving at the heart of what makes a company viable. And even if an attack doesn't bankrupt a firm altogether, corporate uncertainty is almost guaranteed to erupt. To make matters worse, the attention of the board and management is invariably diverted from day-to-day responsibilities and strategic opportunities.

What Makes Companies Susceptible to Short Attacks?

As self-proclaimed investigators of corporate weakness, short attackers pick their targets carefully. But what exactly are they looking for? In general, vulnerabilities can be divided into two categories: long-term and short-term.

Long-Term Vulnerabilities

- **Executive Interim Status.** As short-term appointments, interim executives are often unable to resolve underlying corporate challenges.
- **Pending Regulatory Challenges.** If regulations threaten a company's fundamental business model, trouble could loom.
- **Financial Reporting Irregularities.** Non-recurring items that continue to appear could hint at broader corporate malaise. Late Form 10-Ks can be a red flag too.
- **Consistent Proxy Challenges.** From governance issues to say-on-pay, a failure to tackle shareholder concerns may imply perceived board incompetence.
- **Excessive Valuation.** Without robust financial or clinical evidence, a company's stock may be overvalued.
- **Weak Corporate Governance.** Weak or inexperienced audit committee chairs are a cause for concern.
- **Executive Background.** From past failures to inappropriate behavior, companies with low-caliber executives are often targeted by short sellers.
- **Private Investment in Public Equity (PIPE) Financings and Other Dilutive Equity Offerings.** PIPES allow investors to sell stock quickly, driving down the market price. Other dilutive equity offerings may also hint at future vulnerabilities.

Short-Term Vulnerabilities

- **Wells Notices or Other Disclosures Regarding SEC Enforcement Action.** Disclosure by public companies of Wells Notices or other disclosures regarding SEC enforcement activity, may portend imminent trouble.
- **Hints of Sandbagging.** If chat boards show company staff 'sandbagging' their firm – lowering expectations to give the impression of strong results later – attackers may strike.
- **Abrupt Departure of Key Executives.** If the CEO or CFO suddenly leaves a company, trouble could loom.
- **Unsavory Investors.** The presence of meddling or distracting investors could presage deeper structural problems.
- **Failure to Achieve Financial Guidance.** One failure tends to lead to another, with short sellers primed to capitalize.



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Guarding Against Short Attacks

Given these varied threats, responsible companies must be prepared to react with a robust and multi-pronged approach. One tactic is to have a share repurchase program in place and to repurchase shares if the stock price becomes depressed. Insiders can also purchase shares in an effort to boost the stock price. These tactics can be used both in advance of or in the face of a short attack to decrease downward pressure on the stock. Beyond stock buybacks, the exact course of action depends on the specific problems a company faces. If, for instance, a firm is reliant on PIPE financings, it can set a minimum share price below which no stock can be issued. Ensuring shareholder concerns are resolved promptly is also critical. Staying abreast of potentially problematic investors is crucial, and is bolstered by the use of best-in-class ownership intelligence platforms.

Yet more than any single policy, the most essential thing in a company's toolbox is its board and management culture. If, for example, a company conducts detailed risk assessments of potential problems, a company is far more likely to identify and mitigate any issues before an attack occurs. Tracking industry trends, and carefully considering how they might affect a company's share price, is also an effective tool. The failure to adequately track and address long-present issues played a role in the Silicon Valley Bank case: between its reliance on homogeneous depositors and its surprising asset size growth, the situation at Silicon Valley Bank was ominous as far back as 2019 with a short seller using social media to warn against the Bank's demise two months before it collapsed.

Improving relationships with investors is also important to a company's overall short attack defense strategy. By partnering with experts in shareholder engagement, CEOs can further gauge pressure points with investors before they become critical – a pertinent tactic when, in 2024 year-to-date, 88 companies have been the subject of short attacks. Frequent external communications are an effective way to improve investor relationships. By articulating a firm's tactical and strategic goals, and publishing evidence of practical progress, executives can bolster their credibility, taking the rug out from under would-be attackers before they can strike. Once again, the numbers here are telling, with 63% of insiders agreeing that communicating on strategy, purpose and values is a key priority.

There are a few quantitative methods to detect whether a short attack is on the horizon. The first is for a company to monitor its overall short interest as a percentage of its public float. Another method is to monitor the cost to borrow a company's stock. Because short sellers borrow shares in connection with taking a short position, an increase in the cost to borrow may indicate a short attack is coming. These financial methods of predicting a short attack can be combined with the qualitative methods discussed above to help determine whether a company is vulnerable.



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Strategies to Reduce Short Interest

A public company can attempt to reduce the short interest in its stock by requesting shareholders to instruct their brokers not to lend their shares. Short selling is facilitated by brokerage firms lending shares held in margin accounts to short sellers that are betting that the price of a stock decreases over time.

A company can consider issuing a press release asking company shareholders to instruct their brokers not to lend their shares. The press release can include a form of a letter to a broker: (i) instructing the broker not to hold the shares in a margin account and (ii) electing to opt out of any share lending programs.

As an alternative to issuing a press release, the company could send a letter to shareholders requesting that shareholders instruct their brokers not to lend their shares.

The methods described above may be useful where a company identifies that it has a large short interest in relation to its public float or a high cost to borrow its shares.

Responding to Short Attacks

Though careful planning to guard against short attacks can reduce the risk of them occurring, sometimes the worst does happen. Despite the pressure this inevitably piles on company executives, it's crucial not to panic. If firms have honed their response strategy in advance, they may be able to repel aggressive attacks. The crucial thing is to effectively counter any short reports with effective tactics in an effort to stop the share price from dropping, and the short attack from succeeding.

Speed and transparency are two unsurprising watchwords here. In practice, leaders can pursue a range of options to respond to short attacks. From a personnel perspective, building a dedicated 'crisis team' of key managers is one good example. Nimble and experienced, this core group can orchestrate any response promptly – especially when it comes to public communications in the face of a short attack. If, for example, a firm has an upcoming earnings conference call, a strongly worded defense can work well. Letters to shareholders and press releases can prove successful too, especially when presaged by perception studies that inform leaders of investor concerns. In more serious cases, boards may form a committee and hire outside counsel to investigate the claims in a short report and/or hire a forensic accounting firm to show that the company is taking the claims seriously.

While short attackers' claims may be exaggerated or off base, they often make a handful of claims based in truth. Given that, the best strategy for companies is often to not give assailants any additional ammunition. In this regard, when faced with a short attack, the company will need to determine if any public response is warranted. There are instances where a public response is absolutely warranted and necessary. There are other instances where a public response may give credibility to a short report that is otherwise being largely ignored by the market. Whether or not to publicly respond is typically a critical first decision point when a company is the subject of a short attack.

After the Initial Noise – First Steps – Advisor Roles

Know the Enemy: Using the resources from all its advisors, the first thing a company should do is understand who they are dealing with. Short sellers come in all different stripes, so it is important to build a dossier on the short seller's campaign history and tendencies. All short sellers have a playbook, so the more a company understands about the short sellers, the more effective their response strategy will be.

Proxy Advisor: Companies must immediately begin an Ownership Intelligence (Oi) campaign (see sample below), which provides an analysis of the institutional and retail shareholders holding the company's stock. This will quickly provide intelligence into the shareholder base of the company's stock and the identity and characteristics of such shareholders.

Oi is streamlined market surveillance that identifies and tracks the true institutional shareholders that are holding a direct financial interest in a company's stock, but are hiding behind custodians. While many companies claim they know who owns their stock, in a short attack a company can literally see its shareholder profile change overnight and continue to shift with news cycles and external market factors.

Executive leadership's and the board's understanding of who owns shares in their company – and how many shares they own – allows them to see where the stock is moving. This, in turn, provides the opportunity to develop an investor relations strategy to combat the short report, while also providing insight into the potential market reaction to any public announcement.

Top Shareholders

Rank	Institution	9/26/24	% O/S	Weekly Change	Change Since 6/30/24	6/30/24	3/31/24	1 Avg Cost Basis	% Gain (Loss)
1	The Vanguard Group, Inc.	29,700,000	8.44%	0	(327,131)	30,027,131	29,333,859	\$94.18	416.38%
2	BlackRock Fund Advisors	17,660,000	5.02%	(140,000)	(388,099)	18,048,099	17,903,883	\$102.08	376.44%
3	SSgA Funds Management, Inc.	15,381,000	4.37%	0	541,242	14,839,758	15,132,415	\$88.08	452.16%
4	T. Rowe Price Associates, Inc. (Investment Management)	12,700,000	3.61%	(450,000)	(2,634,264)	15,334,264	16,038,442	\$67.53	620.13%
5	Capital Research & Management Co. (World Investors)	10,700,000	3.04%	0	3,349,455	7,350,545	7,284,269	\$122.84	295.90%
6	Invesco Capital Management LLC	10,100,000	2.87%	0	1,100,000	9,000,000	8,400,000	\$252.36	92.72%
7	Fidelity Management & Research Co. LLC	8,000,000	2.27%	(350,000)	(1,132,962)	9,132,962	8,162,422	\$224.64	116.50%
8	JPMorgan Investment Management, Inc.	7,600,000	2.16%	200,000	1,633,096	5,966,904	4,165,613	\$292.82	66.09%
9	Geode Capital Management LLC	7,336,000	2.08%	0	(33,485)	7,369,485	7,151,034	\$163.77	196.96%
10	Alliance Bernstein LP	7,250,000	2.06%	0	450,658	6,799,342	6,603,732	\$176.96	172.82%

Top Five Buyers since 6/30/24	Shares Bought	Position
Capital Research & Management Co. (World Investors)	3,349,455	10,700,000
JPMorgan Investment Management, Inc.	1,633,096	7,600,000
Wellington Management Inc.	1,580,303	4,500,000
Massachusetts Financial Services Co.	1,360,000	1,360,000
Invesco Capital Management LLC	1,100,000	10,100,000
Totals	9,022,854	34,260,000

Top Five Sellers since 6/30/24	Shares Sold	Position
T. Rowe Price Associates, Inc. (Investment Management)	(2,634,264)	12,700,000
Jennison Associates LLC	(1,770,420)	2,400,000
Edgewood Management LLC	(1,573,166)	2,400,000
Citadel Advisors LLC	(1,379,271)	44,000
Walter Scott & Partners Ltd.	(1,287,918)	1,400,000
Totals	8,645,039	18,944,000

Stock Loan Analysis: Every company facing a short attack should conduct a Stock Loan Analysis. (see sample below) In today’s environment of minimal management fees, institutions are increasingly relying on revenue from lending shares to short sellers, particularly as higher interest rates make the short rebate more lucrative.

Alliance Advisors’ monthly stock loan analysis identifies the top institutions lending their shares and summarizes the effect on voteable shares. This streamlined report is a valuable resource for issuers to incorporate into their response to a short seller campaign and can also help to predict a short attack. A company’s ability to identify that there are a lot of shares out on loan may serve as an early warning sign that a short attack is coming.

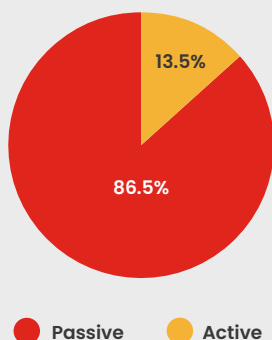
To put the size of this market into context, it is estimated that globally, securities lending makes up around \$3 trillion in outstanding loans. Some of the major participants in this market include pension funds, mutual funds, and insurance companies, as well as hedge funds, broker-dealers, and custodial banks.

Typically, the interests of short sellers and institutional shareholders are not aligned, therefore a company can engage with their institutions to request that they reconsider their stock loan policy during or in advance of a short attack. This happens rarely and is complicated, but it is possible to get an institution to pull back the stock.

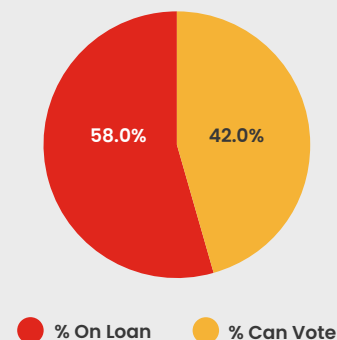
Stock Lending Analysis

Holder	Shares	Market Value	Date	Loaned Market Value	% on Loan	% Can Vote	Votable Shares	Shares on Loan
Vanguard Total Stock Market ETF	1,127,137	\$4,576,176.22	30-Jun	\$3,848,603.92	84.1%	15.9%	179,205	947,932
Altegris/AACA Opportunistic Real Estate Fund	1,085,216	\$4,405,976.96	30-Jun	\$0.00	0.0%	100.0%	1,085,216	-
iShares Russell 2000 ETF	908,301	\$3,687,702.06	30-Jun	\$530,642.00	14.4%	85.6%	777,601	130,700
Vanguard Extended Market ETF	681,992	\$2,768,887.52	30-Jun	\$2,119,522.32	76.5%	23.5%	159,942	522,050
Dunham Real estate Stock Fund	358,685	\$1,484,955.90	31-Jul	\$1,444,862.00	97.3%	2.7%	9,685	349,000
Fidelity Small Cap Index Fund	357,899	\$1,481,701.86	31-Jul	\$1,327,284.00	89.6%	10.4%	37,299	320,600
iShares Russell 2000 Growth ETF	336,191	\$1,364,935.46	30-Jun	\$1,224,902.00	89.7%	10.3%	34,491	301,700
Fidelity Extended Market Index Fund	251,625	\$1,318,515.00	31-May	\$0.00	0.0%	100.0%	251,625	-
Vanguard Russell 2000 ETF	226,191	\$1,164,935.46	30-Jun	\$924,902.00	79.4%	20.6%	46,606	179,585
Bridgeway Funds Ultra-Small Co Market Fund	104,400	\$423,864.00	30-Jun	\$35,630.56	8.4%	91.6%	95,624	8,776
TIAA-CREF Funds – TIAA-CREF Equity Index Fund	97,088	\$401,944.32	31-Jul	\$395,026.38	98.3%	1.7%	1,671	95,417
Total	5,534,725	\$23,079,594.76		\$11,851,375.18	58.0%	42.0%	2,325,906	3,208,819

Percentage on Loan of Active vs Passive



Percentage on Loan vs Percentage of Can Vote





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George Rubis
Alliance Advisors IR

IR Advisor: In times of short attacks, the role of Investor Relations (IR) becomes even more critical, evolving into a trusted advisor for management and the board. IR can be expected to provide a tactical plan and thorough analysis of the shareholder base to navigate through these challenges. By offering insights into investor sentiments and market dynamics, IR can help shape the company's strategic response, ensuring that management and the board are well-informed and prepared to address concerns head-on. This trusted advisory role is crucial in maintaining transparency, fostering trust, and demonstrating the company's commitment to safeguarding shareholder interests.

In advance of a short attack and even after an attack has occurred, a company's existing disclosure can be thoroughly reviewed to identify any areas that could be exploited by short sellers. By addressing these potential vulnerabilities proactively, the company can fortify its position and preemptively counter negative narratives.

Refreshing the investor presentation is another crucial strategy. This involves updating and refining the content to specifically address the attack points raised by short sellers. By transparently presenting the company's strengths and future prospects, IR can help reshape the narrative and bolster investor confidence.



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Alyssa Barry
Alliance Advisors IR

Ordinary course announcements also play a pivotal role in regaining control of the narrative. These routine updates can be leveraged to highlight positive developments and progress, subtly countering the negative sentiments propagated by short attacks. Identifying and emphasizing these opportunities within the next earnings announcement materials can also be highly effective. By weaving in responses to attack points, the company can use these announcements to directly address concerns and demonstrate resilience.

Engaging directly with shareholders through a non-deal roadshow (virtual, in-person and/or hybrid), accompanied by supportive analysts, is another key tactic. This outreach effort, coordinated with Alliance Advisors' Ownership Intelligence (OI) team, involves analyzing stock ownership patterns over a six-day window to identify which shareholders are staying loyal and which may be swayed by the attacks. This data-driven approach ensures that the roadshow is targeted and impactful, fostering direct communication and reassurance among shareholders.

Finally, the possibility of holding an analyst and investor day should be considered. This can provide a platform for deeper engagement with the investment community, offering a comprehensive overview of the company's strategy, performance, and long-term vision. By taking these steps, IR teams can effectively counter short attacks, safeguard the company's reputation, and maintain investor trust.

Legal Advisor: Companies targeted by a short seller typically need to prepare for securities class action litigation and derivative lawsuits. A company may also receive an inquiry from the SEC's enforcement division or become the subject of a DOJ investigation. As such, it is important to have counsel experienced in securities litigation, SEC enforcement defense, and white collar defense when dealing with a short seller report.

It is also important for the Board to consider whether it should engage a law firm to conduct an investigation of the claims made in a short report. It is often advisable for the company to retain independent counsel to investigate the claims made in a short report rather than relying on existing counsel.

A company's board of directors should consider the claims made in a short report as it may have a fiduciary duty to investigate credible claims. This is less likely to be the case when the report merely generally critiques the company's business model or the company's execution of its strategy. An investigation of claims is more likely to be considered when the report contains allegations of impropriety or accounting irregularities that are potentially credible or for which the company has no information at the present time to determine their credibility.

Depending on the allegations, companies are often advised to form a special committee to investigate such claims or to investigate such claims through the audit committee, and to retain independent counsel for that purpose. Conducting an investigation may also prove helpful in anticipation of inquiries from regulators, signaling the company's proactive efforts to investigate the claims.

A company may consider various legal remedies when dealing with a short seller. One potential response is for a company to seek to persuade the SEC or DOJ to investigate and bring claims against a short seller. In addition to contacting the government, a company may also pursue private civil litigation against short sellers engaged in short and distort schemes. Five potential civil claims that can be made against a short seller are: defamation, trade libel and disparagement, tortious inference, state consumer protections, and civil conspiracy. Such actions present companies with an opportunity to recover some of the damages sustained from short sellers' market manipulation schemes. Any strategy that involves going to the government or bringing civil litigation should be considered very carefully before being deployed as it may actually do more harm than good. Counsel experienced in these matters should be consulted before deciding on this course of action.

Response Strategy – All Advisors

The response strategy should generally include the following steps:

- Isolate the major allegationss of the short seller and gather the facts to refute the allegations.
- Communicate with all stakeholders (shareholders, employees, customers, partners, and vendors). Communication with shareholders is particularly important because it gives management the opportunity to state their case in addition to being able to confirm investor stock positions.
- Engage with sell-side analysts.
- Research and understand the short seller to anticipate future activity by the short seller, such as a second short report.
- Refocus investor messaging to communicate your value creation narrative.

Beyond Short-Selling: Alliance Advisors, Paul Hastings and Transforming Operations

While a company should prepare for and guard against short attacks, it would be short sighted to see ownership intelligence, shareholder engagement or legal strategies as narrow tactical ploys. Instead, getting to grips with the company's operations holistically can transform its fortunes over the long-term. For instance, while keeping track of the company's investor base and stock lending positions can help identify a potential short attack, the same techniques are also important when preparing for strategic transactions. Without a solid grasp of legal options or how many votes an investor has access to – an issue made more complex by the rising prevalence of securities lending – expensive deals risk being defeated by shareholders.

More to the point, partnering with Alliance Advisors on the proxy and IR advisory side and Paul Hastings on the legal side can ensure that busy corporate leaders focus on the essentials. Boasting deep experience across the corporate space, both firms' teams of industry veterans can offer guidance everywhere from proxy fights to short seller defense.

To put it differently, combatting short attacks should be seen as a business opportunity – one that can ultimately improve operations as a whole.

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